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May 25, 1993

RECEIVED

MAY 25 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: MM Docket No. 93-107
Channel 280A
Westerville, Ohio

Dear Ms. Searcy:

Enclosed for filing on behalf of Ohio Radio Associates, Inc. are an original and six (6) copies of its "Motion to Enlarge Issues Against WBC."

Please contact the undersigned in our Washington, D.C. office.

Respectfully submitted,

McNAIR & SANFORD, P.A.

By: John W. Hunter
John W. Hunter S.T. 4

By: Stephen T. Yelverton
Stephen T. Yelverton

Enclosure

B:SEARCY52.FCC

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MAY 25 1993

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BPH-91123 LMB

B: SEARCY52.FCC

MOTION TO ENLARGE ISSUES AGAINST WBC

Ohio Radio Associates, Inc. ("ORA"), by its attorneys, pursuant to Section 1.229 (b)(1) of the Commission's Rules, hereby submits this motion to enlarge the issues against Westerville Broadcasting Company, Limited Partnership ("WBC"). This motion is based on documents exchanged by WBC pursuant to the standard document production on May 10, 1993, and thus is timely filed within fifteen (15) days of discovery of new information. In support of its motion to enlarge the issues, ORA submits the following comments.

WBC stated in its application, filed on December 31, 1991, that it had \$300,000 in available funds from Spurgeon Webber, Jr., the father of Spurgeon Webber, III, and Deidra W. Humphrey, the two WBC limited partners. It further stated that its total cost estimates are \$300,000. See, attachment 1.

WBC produced its cost estimates, dated December 20, 1991, in the standard document exchange. These estimates show a total of \$293,000 in estimates for equipment and construction only. Nothing is shown for the first three months operating costs, such as programming and personnel. See, attachment 2.

Commission policy requires that an applicant prepare at the time of certification documentation showing cost estimates for the first three months of operation, along with the construction costs. See, Revision of FCC Form 301, 50 RR2d 381, 382 (1981); FCC Form 301 Instructions (1989-1992 version), Section III (D)(1)(b), pages 5-6. See, attachment 3. WBC failed to do this.

Accordingly, the failure of WBC to include in its estimates operational costs for the first three months requires the specification of a financial qualifications issue. Columbus Broadcasting Corp., 3 FCC Rcd 5480, 5481, para. 7 (MMB 1988), incomplete cost estimates raise financial qualifications issue; Dean F. Aubol, 6 FCC Rcd 4117, para. 3 (MMB 1991), where cost estimates would exceed the amount of available committed funds, a financial qualifications issue is raised; Victorson Group, Inc., 6 FCC Rcd 1697, 1700, para. 19 (Rev. Bd. 1991), vague "general sense" of total cost estimates is insufficient. Commission policy would not allow WBC to now change or revise its stated cost estimates without a showing of "good cause." Aspen FM, Inc., 6 FCC Rcd 1602, 1603, paras. 11-13 (1991).

The Presiding Judge is requested to specify the following issues:

(1) To determine whether Westerville Broadcasting Company, Limited Partnership, prepared at the time of certification insufficient cost estimates, whether it does not have available sufficient committed funds to cover its first three months of operations and, if so, whether it is financially qualified to be a Commission licensee, and thus whether its application should be granted?

(2) To determine whether Westerville Broadcasting Company, Limited Partnership, knowingly and intentionally misrepresented its financial qualifications in its December 31, 1991, application and, if so, whether it possesses the requisite character and basic qualifications to be a Commission licensee, and thus whether its application should be granted?

If these issues are specified, ORA requests that WBC produce any documents related to its cost estimates which have not already been produced. This would include notes or drafts relating to its cost estimates, records of telephone conversations and facsimile transmissions relating to preparation of its cost estimates, and documents relating to the sources of information for the costs included in its estimates.

WHEREFORE, in view of the foregoing, ORA requests that the foregoing issues be specified against WBC.

Respectfully submitted,

McNAIR & SANFORD, P.A.

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John W. Hunter

By: Stephen T. Yelverton
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May 25, 1993

020979.00001 ORA.60

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

- 1 The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

- 2 State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 300,000.00


3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Spurgeon W. Webber, Jr.	(704) 394-3072	Father of Spurgeon W. Webber, III and Deidra W. Humphreys	\$300,000.00

WESTERVILLE BROADCASTING COMPANY, LTD
5412 Flintrock Court
Westerville, Ohio 43081
(614) 891-1669

Westerville, Ohio (Chanel 103.9 FM)
Construction Summary

1. Real Estate.....	\$ 40,000
2. Electrical service, transmitter and studio.....	10,500
3. Modifications to leased studio building.....	15,000
4. Equipment installation and testing.....	20,000
5. Office equipment.....	14,500
6. Transmitter plant.....	51,000
7. Three hundred ft. guyed tower w/lighting.....	30,000
8. Transmitter building.....	25,000
9. Studio equipment (stereo consoles, etc.).....	48,000
10. Miscellaneous, spares and contingency.....	39,000
GRAND TOTAL.....	\$293,000


Freeman Edwards II
12/20/91

Section 610 of the Communications Act has been interpreted with respect to limited partnerships to prohibit equity contributions or voting interests of alien limited partners, which in the aggregate exceed 20% in a broadcast licensee or which in the aggregate exceed 25% in a partnership which holds a controlling interest in a broadcast licensee. The interests held by aliens in a licensee through intervening domestically organized limited partnerships can be determined by multiplication of any intervening insulated interests in the manner set forth above with respect to corporate applicants, except that insulated limited partnership interests exceeding 50% may be multiplied rather than considered as a 100% interest. However, the multiplier is not used in calculating the limited partnership link in the ownership chain UNLESS the applicant is able to certify that the alien partner is effectively insulated from active involvement in the partnership affairs. For example, see Instruction A, above.

The applicant must determine the citizenship of each officer and director. It must also determine the citizenship of each shareholder or else explain how it determined the relevant percentages. For large corporations, a sample survey using a recognized statistical method is acceptable for this purpose.

- E. Commission policies and litigation reporting requirements for broadcast applicants have been revised with a view to focusing on misconduct which violates the Communications Act or a Commission rule or policy and on certain specified non-FCC misconduct which demonstrates the proclivity of an applicant to deal truthfully with the Commission and to comply with its rules and policies. The categories of relevant non-FCC misconduct include: (1) misrepresentations to any other governmental unit resulting in criminal or civil violations; (2) criminal convictions involving false statements or dishonesty; (3) certain felony convictions; and (4) adjudicated violations of anticompetitive or antitrust laws that are broadcast related. The parameters of the revised policies and requirements are fully set forth in Character Qualifications, 102 FCC 2d 1179 (1985), reconsideration denied, 1 FCC Rcd 421 (1986).

INSTRUCTIONS FOR SECTION III - FINANCIAL QUALIFICATIONS

- A. All applicants filing Form 601 must be financially qualified to effectuate their proposals. Certain applicants (i.e., for a new station, to reactivate a silent station, or if specifically requested by the Commission) must demonstrate their financial qualifications by filing Section III. DO NOT SUBMIT Section III if the application is for changes in operating or authorized facilities.
- B. An applicant for a new station must attest it has sufficient net liquid assets on hand or committed sources of funds to construct the proposed facility and operate for three months without additional funds. In so certifying, the applicant is also attesting that it can and will meet all contractual requirements, if any, as to collateral, guarantees, donations, and capital investments. As used in Section III, "net liquid assets" means the lesser amount of the net current assets or of the liquid assets shown on a party's balance sheet, with net current assets being the excess of current assets over current liabilities.
- C. Documentation supporting the certification of financial qualifications need not be submitted with this application but must be available to the Commission upon request. The Commission encourages that all financial statements used in the preparation of this application be prepared in accordance with generally accepted accounting principles.
- D. (IXa) The applicant must estimate the initial costs of constructing and operating the facility proposed in the application. The estimate for constructing the facility should include, but is not limited to, costs incurred for items listed below. In calculating costs for the items below, determine the costs for the items in place and ready for service, including amounts for labor, supervision, materials, supplies, and freight:

Antenna System (including antenna, antenna tower, transmission line, phasing equipment, ground system, coupling equipment and tower lighting);

RF Generating Equipment (including transmitter, tubes, filters, diplexer, remote control equipment, and automatic logger);

Monitoring and Test Equipment (including frequency monitor, modulation monitor, oscilloscope, dummy load, vectorscope, and video monitors);

Program Origination Equipment (including control consoles, film chains, cameras, audio tape equipment, video tape equipment, program and distribution amplifiers, limiters, and transcription equipment);

Acquiring Land;

Acquiring, Remodeling or Constructing Buildings;

Services (including legal, engineering, and installation costs); and

Other Miscellaneous Items (including mobile and STL equipment, non-technical studio furnishings, etc.)

- (b) The estimate must also include the costs of operating the proposed facility for the first three months, including the costs of proposed programming, without relying on advertising or other revenues to meet operating costs. To arrive at an estimate of the total costs to be met by the applicant, the total construction costs should be added to the estimated cost of operation for three months.

- (2) The applicant must also identify, in the application, its sources of funding for the construction and operation of the proposed facility for the first three months. For each source of funding, the applicant must identify the source's name, address, telephone number, a contact person if the source is an entity, the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by the source. The total amount of funds to be supplied by all the sources listed should equal or exceed the estimated cost of construction and operation computed in accordance with paragraph (1) and stated in the application in response to Question 2, Section III.

The funding sources listed on the application should include, if applicable: existing capital, new capital, loans from banks (identified separately), loans from others (identified separately), profits for existing operations, donations, and net deferred credit from equipment suppliers (identified separately and determined by deducting from the deferred credit the down payment, payments to principal, and interest payments). (Note: If the first equipment payment is due upon shipment, the applicant must include five monthly payments; if due in 30 days, four monthly payments; if due in 60 days, three monthly payments, etc.)

- (3) The applicant must also have on hand, at the time it files its application, BUT NEED NOT SUBMIT WITH THE APPLICATION, the following documentation:

- (a) For the applicant:

A detailed balance sheet at the close of a month within 90 days of the date of the application showing the applicant's financial position.

A statement showing the yearly net income, after Federal income tax, for each of the past two years, received by the applicant from any source.

- (b) For each person identified in response to Question 8, Section III, who has already furnished funds, purchased stock, extended credit, or guaranteed loans:

A copy of the agreement obligating the party to furnish funds, showing the amount furnished, the rate of interest, the terms of repayment, and security, if any.

- (c) For each person identified in response to Question 8, Section III, who has agreed to furnish funds, purchase stock, extend credit, or guarantee loans, a balance sheet or a financial statement showing:

All liabilities and current and liquid assets sufficient to meet current liabilities;

Financial ability to comply with the terms of the agreement to furnish funds, purchase stock, extend credit, or guarantee loans; and

Net income after Federal income tax, received for the past two years.

Note: If the statement does not indicate current and liquid assets sufficient to meet the proposed commitments, the financial statement must be supplemented by a statement showing how non-liquid assets will be used to provide the funds, and the extent to which such assets have liens or prior obligations against them.

- (d) For financial institutions or equipment manufacturers, identified in response to Question 8, Section III, who have agreed to make a loan or extend credit:

The document by which the institution or manufacturer has agreed to provide the loan or credit, showing the amount of loan or credit, terms of payment or repayment of the loan, collateral or security required, rate of interest to be charged, and special requirements (e.g., moratorium on principal or interest, waiver of collateral, etc.); and

A statement from any parties required to provide special endorsements showing their willingness to provide such endorsements.

CERTIFICATE OF SERVICE

I, Stephen T. Yelverton, an attorney in the law firm of McNair & Sanford, P.A., do hereby certify that on this 25th day of May, 1993, I have caused to be hand delivered or mailed, U.S. mail, postage prepaid, a copy of the foregoing "Motion to Enlarge Issues Against WBC" to the following:

The Honorable Walter C. Miller*
Administrative Law Judge
Federal Communications Commission
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2000 L Street, N.W.
Washington, D.C. 20554

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Hearing Branch
Federal Communications Commission
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Limited Partnership

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Stephen T. Yelverton